

The Honorable Franklin D. Burgess

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON

MICHAEL BRANNAN, Individually, as  
Administrator of the estate of BARBARA  
BRANNAN, Deceased, and as Parent and  
Natural Guardian for his minor children S.B.  
and R.B.,

Plaintiffs,

v.

NORTHWEST PERMANENTE, P.C.;  
KAISER FOUNDATION HEALTH PLAN OF  
THE NORTHWEST; MINDY ROTHBARD,  
M.D.; and MIKE G. LIN, M.D.,

Defendants.

NO. C05 05157 FDB

PLAINTIFFS' RESPONSE TO  
DEFENDANTS' MOTIONS IN  
LIMINE

Plaintiffs respond to defendants' specific requests in Limine as follows:

1. No objection.
2. No objection.
3. No objection.
4. Plaintiffs submit that such affidavits and/or reports may be used at trial, not as a substitute for trial testimony but to the extent permissible under the Federal Rules of Evidence.

1 Specifically, such affidavits or reports shall not be utilized in lieu of live witnesses but may be  
2  
3 used for purposes of impeachment and rehabilitation consistent with the Federal Rules of  
4  
5 Evidence.  
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7 5. Plaintiffs have no objection to a Motion to Preclude Experts from testifying as to  
8  
9 what they would do in a particular case. Obviously this limitation is equally applicable to the  
10  
11 defendants' expert witnesses. In fact, plaintiffs suggest that this request from defendants is  
12  
13 consistent with Plaintiffs' Motion in Limine to Limit Testimony of Dr. Schillhammer, one of  
14  
15 Mrs. Brannan's treating physician, who defendants have listed as a trial witness. Accordingly  
16  
17 his testimony should be limited, as plaintiffs have requested, to the treatment he supplied. As  
18  
19 further requested in plaintiffs' motion in limine he should be precluded from testifying as to what  
20  
21 he would have done if he had seen the EKG from Harborview Hospital during the time when he  
22  
23 was treating Mrs. Brannan.  
24

25 6. No objection.  
26

27 7. Plaintiffs have no objection to precluding lay opinion and testimony regarding the  
28  
29 standard and care required by physicians from all non-physician witnesses. Plaintiffs assume  
30  
31 that this applies equally to defendants' witnesses as well as plaintiffs' and that specifically this  
32  
33 should preclude Ali Olyaei, a non-physician from opining, either directly or indirectly, as to  
34  
35 whether Dr. Rothbard breached the standard of care in her prescription and refill of amphetamine  
36  
37 salts for Barbara Brannan.  
38

39 8. No objection. Plaintiffs' counsel is unaware of any specific evidence in this case  
40  
41 to which this motion applies.  
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1           9.       Plaintiffs' counsel objects only to the extent that such matters may be fair  
2  
3 argument and therefore permissible depending upon the testimony in the case. In any event,  
4  
5 plaintiffs' counsel has no intention of referring to a "conspiracy of silence".  
6

7           10.       Plaintiffs' counsel agrees not to refer to the location of defendants' attorneys'  
8  
9 offices and the number of attorneys in the firm of Hoffman, Hart & Wagner. To the same extent,  
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11 this should preclude any reference by the Defendants to the location of plaintiffs' counsel offices  
12  
13 in Philadelphia and New Jersey.  
14

15           11.       No objection.  
16

17           12.       No objection. Plaintiffs' counsel will so notify the Court before using.  
18

19           13.       Plaintiffs' counsel does not believe that there will be an issue as to withholding  
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21 evidence from the case in chief and using it as rebuttal. Plaintiffs' counsel notes the Courts prior  
22  
23 rulings with regard to the use of Dr. Miller as a rebuttal witness for this.  
24

25           14.       No objection.  
26

27           15.       Plaintiffs' counsel submits that this does not apply to any particular evidence or  
28  
29 anticipated evidence in this case.  
30

31           16.       No objection.  
32

33           17.       Plaintiffs' counsel is aware of the Court's prior ruling with regard to Dr. Richard  
34  
35 Slavin and has no intention to referring to him unless something occurs in the testimony of the  
36  
37 defendants' pathologists that opens the door, in which case plaintiffs' counsel will raise the  
38  
39 intended reference to Dr. Slavin with the Court prior to doing to before the jury.  
40

41           18.       Plaintiffs' counsel has no objection to sequestration of all expert and lay witnesses  
42  
43 with the exception that certain family members of plaintiffs will be called and plaintiffs' counsel  
44  
45 requests that they be allowed to sit in on the trial.

1 19. Plaintiffs' counsel is unaware of any 404(b) witness with reference to evidence  
2 concerning Dr. Lin and Dr. Rothbard. Plaintiffs' counsel does object to the broad wording of  
3 this request in limine because the understanding as to what activities do or do not have a causal  
4 connection to the case may well differ from one advocate to another. Plaintiffs' counsel is  
5 unaware of any specific evidence in this case that plaintiffs' counsel intends to offer that has no  
6 such causal connection.  
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13 20. The Court has addressed this matter previously and obviously the Court's rulings  
14 are controlling.  
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17 21. Plaintiffs' counsel has no intention to refer to either the defendants or defendants'  
18 witnesses by their first name. Counsel suggests that how counsel refers to his own clients and  
19 their family members is a matter best left to the judgment of counsel.  
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21  
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23 22. No objection.  
24

25 23. No objection.  
26

27 24. No objection.  
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29 25. Plaintiffs' counsel is aware of the Court's prior ruling in this regard and obviously  
30 will abide.  
31  
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33 26. No objection. This is not an issue in this case.  
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35 27. Prior to receiving defendants' objection to plaintiffs' exhibits, plaintiffs' counsel,  
36 as discussed with defendants' counsel, believed that it was unnecessary to call either Anne  
37 Gordon or Melissa Pemberton from the Washington State Toxicology laboratory. Paragraphs 29  
38 through 31 of the admitted facts in the Pre-Trial Order provide:  
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43 29. In order to aid him in his autopsy, Dr. Clifford Nelson requested a  
44 Washington State Toxicology Report to determine what, if any, substances were  
45 contained in the decedent (Barbara Brannan) blood.

1 30. The Washington State Toxicology report was performed on July 30, 2002.

2  
3 31. The results of the Washington State Toxicology report which is plaintiffs'  
4 Exhibit 1 reflected the presence of caffeine and .06 mg/l of amphetamine in the  
5 decedent's blood.  
6

7 28. Prior to defendants' objections, plaintiffs' counsel believed that it was  
8  
9 unnecessary to have anyone from the Washington State crime lab testify for the purposes of  
10  
11 authenticating the state toxicology report. Plaintiffs' counsel had previously told defendants'  
12  
13 counsel that the only purpose for which such witnesses would have to appear would be to  
14  
15 authenticate the toxicology report and he requested an agreement that to that effect. Again,  
16  
17 plaintiffs' counsel thought that agreement was in hand, but then received defendants' objections  
18  
19 to plaintiffs' exhibits, specifically Exhibit "1" which is the Washington State Toxicology  
20  
21 Laboratory Report dated 7/30/02 referred to in the "admitted facts" to which defendants objected  
22  
23 "authentic stipulated/admissibility disputed." Thus, defendants' position on the admissibility of  
24  
25 the toxicology results is unclear. Plaintiffs' counsel submits that the report should be admitted  
26  
27 based on counsels' prior understanding that it would not be necessary to call anyone from the  
28  
29 Washington State Toxicology Laboratory to authenticate the report. Obviously, defendants'  
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31 position in this regard needs to be clarified.  
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1 DATED this 16th day of November, 2006.

2  
3 **GORDON MURRAY TILDEN LLP**

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5  
6  
7 By 

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**CERTIFICATE OF SERVICE**

I hereby certify that on November 16, 2006, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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